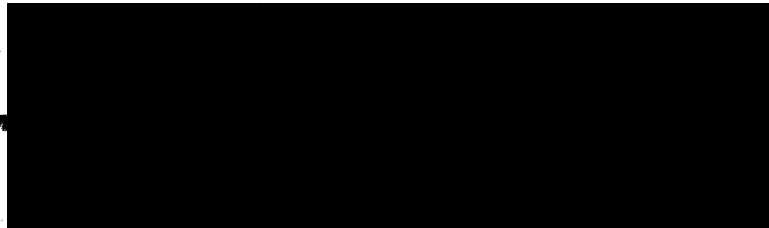


GI

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



DEC 29 2004

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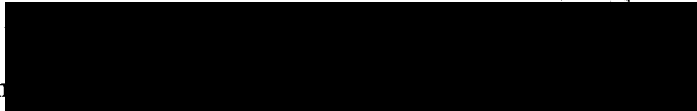


Office: LOS ANGELES

Date:

IN RE:

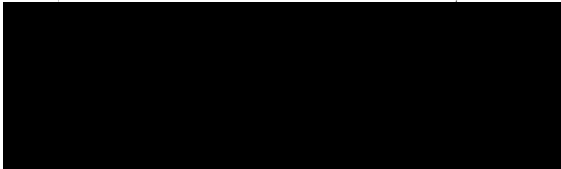
Obligor:
Bonded Alien



IMMIGRATION BOND:

Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on January 21, 2003, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 21, 2004, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of Immigration and Customs Enforcement (ICE) at 8:45 a.m. on February 23, 2004, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 17, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that ICE ignored the language in Exhibit G of the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the Immigration and Naturalization Service (legacy INS) and Far West Surety Insurance Company requiring the director to state a correct purpose on the Form I-340. Counsel asserts that ICE cannot avoid the requirement to state a correct purpose on an Form I-340 by stating no purpose at all.

The record reflects that the Form I-340 did not indicate the purpose for the surrender of the alien.

The Settlement Agreement requires the Form I-340 to state the correct purpose for which the alien is to be produced. The fact remains, however, that the field office director was and is free to call the alien in for an interview and/or custodial determination any time.

On appeal, counsel asserts that according to the Executive Office for Immigration Review hotline, the alien's case is still pending with the immigration court. Counsel argues that nonetheless, ICE demanded the alien's surrender on February 23, 2004. Counsel claims that although ICE has a contractual right under the delivery bond to make such a demand, it is a flagrant abuse of that right and nothing more than a blatant tactic to effect a breach.

Counsel's argument is without merit as the record reflects that removal proceedings were held in absentia on January 6, 2004, and the alien was ordered removed from the United States. The alien filed a motion to reopen a week after the breach notice was issued, and therefore does not negate the bond breach that occurred on that date. Further, bond proceedings are separate and distinct from deportation proceedings. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the United States. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

The record also reflects that subsequent to the filing of the motion to reopen, a removal hearing was held on June 7, 2004, and the alien was ordered removed from the United States. On June 14, 2004, the alien filed an appeal before the Board of Immigration Appeals (BIA). On August 27, 2004, the BIA affirmed, without opinion the immigration judge's order.

The present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien dated January 21, 2004 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on February 23, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on February 2, 2004. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.